IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3019 OF 2005

Narayan Gopalrao Agarkar, .. Petitioner.

Vs

Nasik Municipal Corporation

& Anr. .. Respondents

Mr Y. Chandulal with Mr U.P.Warunjikar for the petitioner.

Mr R.V.More with Mr Umesh Mankapure for respondent no.2.

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.

DATE : 24.10.2005.

PC:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioner seeks a mandamus directing the respondent-Municipal Corporation, Nashik, to set aside the appointment of respondent no.2 as Executive Engineer (Electrical) and instead appoint the petitioner. Notice to show cause why the petition be not admitted was issued and a detailed reply has been

filed by the Corporation. Paragraph 8 of the reply reads thus;

> "I further say and submit that in pursuance of several complaints and in accordance with the Government Resolution creating post of Executive Engineer (Electrical), a meeting of Departmental Promotional Committee was held on 13.2.2003. The D.P.C, considering the qualification and eligibility of the petitioner and respondent no.2, came to the conclusion that the respondent no.2 is eligible and entitled to be promoted to the post of Executive Engineer (Electrical). The minutes of D.P.C is already annexed to the petition at Exhibit-G."

The claim of the petitioner for consideration of the promotional post of the Executive Engineer was, thus, considered by the departmental promotion committee and a specific statement is made in the foregoing paragraph that the qualification and eligibility of the petitioner and respondent no.2 was examined by the Committee and the Committee came to the conclusion that respondent no.2 is liable to be selected. The only right, which the employee has under Article 16 of the Constitution,

is a right to be considered for a promotional post. Such right having been granted to the petitioner and the petitioner having been considered by the DPC, nothing survives in this petition. It is, accordingly, dismissed.

3. The learned counsel appearing for the petitioner wanted to place, by way of rejoinder, certain documents to show that in the departmental enquiry he is exonerated. His conviction or acquittal in the departmental proceedings was not under consideration when the DPC is met and the reason given by the DPC is a better qualification of respondent no.2. Consequently, no useful purpose will be served by granting time for filing rejoinder. The request for filing rejoinder is rejected.

(D.B.BHOSALE, J.) **(V.G.PALSHIKAR, J.)**